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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

K. HOVNANIAN FORECAST HOMES,  
INC.,

Plaintiff and Appellant,

v.

IRC COACHELLA VENTURES, LLC et al.,

Defendants and Respondents.

D056228

(Super. Ct. No. 37-2007-00074000-  
CU-BC-CTL)

APPEAL from orders of the Superior Court of San Diego County, Ronald L. Styn,  
Judge. Reversed.

In *K. Hovnanian Forecast Homes, Inc. v. IRC Coachella Ventures* (Feb. 25, 2010) D055254 [nonpub. opn.] (*Forecast I*), this court concluded the trial court erred by granting judgment notwithstanding the verdict (JNOV) in favor of defendants and cross-complainants IRC Coachella Ventures, LLC (IRC) and Innovative Communities, Inc. (Innovative). This court reversed, reinstated the jury's \$250,430.31 verdict for plaintiff

and cross-defendant K. Hovnanian Forecast Homes, Inc. (Forecast) and awarded costs on appeal to Forecast.

While the appeal in *Forecast I* was pending, on August 25, 2009, the trial court granted in part and denied in part Forecast's motion to tax costs; denied Forecast's motion for attorney fees; granted IRC and Innovative's motion to tax costs; and granted in part and denied in part IRC and Innovative's motion for attorney fees. Forecast now appeals the award of fees to IRC and Innovative and the denial of Forecast's motion to tax costs.

Forecast, IRC and Innovative have filed a joint application and stipulation for reversal of orders and remand of action to the superior court (Code Civ. Proc., § 128, subd. (a)(8)). They seek reversal of the orders awarding fees and costs to IRC and Innovative, based on this court's opinion in *Forecast I*, which vacated the basis of the fees and costs awards, and remand for further proceedings consistent with the stipulation and the opinion in *Forecast I*.

We grant the application. The application meets the requirements of Code of Civil Procedures section 128, subdivision (a)(8), which states in part: "An appellate court shall not reverse or vacate a duly entered judgment upon an agreement or stipulation of the parties unless the court finds both of the following: [¶] (A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal. [¶] (B) The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement."

## DISPOSITION

The August 25, 2009 orders granting in part and denying in part Forecast's motion to tax costs, denying its motion for attorney fees, granting IRC and Innovative's motion to tax costs, and granting in part and denying in part IRC and Innovative's motion for attorney fees are reversed. The case is remanded to the trial court for further proceedings consistent with the parties' stipulation and the opinion in *Forecast I*.

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McINTYRE, J.

WE CONCUR:

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McCONNELL, P. J.

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IRION, J.